UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-5695
Summary Calendar

LARRY WAYNE GROSS,

Plaintiff-Appellant,

VERSUS

HARLON COPELAND, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
(SA 92 CA 145)

(September 27, 1993)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:[1]

Appellant contends that he was denied adequate medical care while detained at the Bexar County (Texas) Adult Detention Center. He sued Harlon Copeland, the Sheriff of Bexar County, and Dr. John Sparks, the medical director of the detention facility. The district court accepted the magistrate judge's recommendations, and dismissed Appellant's complaint. We affirm.

I.

In September 1989, while he was a pretrial detainee at the

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[1] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Bexar County Detention Center, Larry Wayne Gross (Gross) began to complain of stomach problems. The medical staff responded with conservative treatment, which did little to alleviate Appellant's condition. In late 1989, tests revealed that Gross was suffering from ulcerative colitis. In February 1990, Appellant underwent surgery; his condition had deteriorated to the point where a total proctocolectomy and ileostomy were necessary.

Alleging that the officials at the Bexar County facility were deliberately indifferent to his serious medical problems, Gross filed this suit in February 1992.[2] The Appellees moved for summary judgment, raising defenses of qualified immunity, limitations, and the absence of personal involvement that would trigger liability. The magistrate judge issued a lengthy and well-reasoned recommendation, which concluded that the Appellant's claim should be dismissed. R. 22-40. The district court considered Gross's objections to these recommendations, and conducted an independent review of the record. R. 3. The court dismissed Appellant's complaint on September 30, 1992.

II.

We focus our attention on the limitations issue, and conclude that Appellant's claims are barred by the applicable statute of limitations. Because § 1983 has no timeline for filing a civil rights claim, federal courts "borrow" the forum state's limitation provision applicable to personal injury actions. See Burge v.

[2] Gross couples his federal civil rights action, 42 U.S.C. § 1983, with a Texas state law claim for cruelty.

Parish of St. Tammany, 996 F.2d 786, 788 (5th Cir. 1993); Ali v. Higgs, 892 F.2d 438, 439 (5th Cir. 1990). In Texas, the applicable period is two years. Tex. Civ. Prac. & Rem. Code § 16.003(a) (Vernon 1986). We look to federal law, however, to ascertain when a cause of action accrues. Burrell v. Newsome, 883 F.2d 416, 418 (5th Cir. 1989). Under federal law, a cause of action arises "'when the plaintiff knows, or has reason to know of the injury which is the basis of the action.'" Id. (quoting Lavellee v. Listi, 611 F.2d 1129, 1131 (5th Cir. 1980)).

The magistrate judge found that Appellant was aware in December 1989 that the previous diagnoses of his condition were incorrect. In any case, Gross knew in January 1990 that the delay in treating his colitis left major surgery as the only effective remedy for his ailment. R. 37-38. Appellant does not dispute this; he attempts to overcome the limitations bar by relying on Texas' tolling provision, Tex. Civ. Prac. & Rem. Code § 16.001(a).[3] Specifically, Gross alleges that he was "of unsound mind." Under Texas law, a statute of limitations does not run if a person is under the legal disability of having an unsound mind. Tex. Civ. Prac. & Rem. Code § 16.001(a)(3).

Appellant's reliance on this tolling provision is misplaced. Gross was neither confined in a mental hospital, as was the case in

[3] "Consistent with the practice of borrowing state statutes of limitations for § 1983 claims, federal courts also look to state law for its tolling provisions." Burge v. Parish of St. Tammany, 996 F.2d 786, 788 (5th Cir. 1993).

Adler v. Beverly Hills Hosp.,[4] nor adjudicated as having an unsound mind, like the plaintiff in Conoco, Inc. v. Ruiz.[5] Furthermore, in response to the district court's questionnaire, Appellant did not indicate that he had any mental impairment that would affect his ability to investigate and prosecute his case. R. 319.

III.

It is undisputed that, at the latest, Gross was aware in January 1990 that the treatment at the Bexar County facility may have exacerbated his illness. At this point, he was in possession of the "critical facts" surrounding his claim of inadequate medical care. See Freeze v. Griffith, 849 F.2d 172, 175 (5th Cir. 1988). This complaint was filed in February 1992, and is untimely under Texas law.

The opinion of the district court is, therefore, AFFIRMED.

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[4] 594 S.W.2d 153 (Tex. Civ. App. -- Dallas 1980).

[5] 818 S.W.2d 118, 122 (Tex. Civ. App. -- San Antonio 1991), aff'd in part and rev'd in part 1992 WL 387420 (Tex. 1992) (unpublished opinion).